

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD**SPECIAL CIVIL APPLICATION No. 2044 of 2000****with****CIVIL APPLICATION NO.11060 OF 2000****IN****SPECIAL CIVIL APPLICATION No. 2044 of 2000****For Approval and Signature:****HONOURABLE MS.JUSTICE H.N.DEVANI**

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1 Whether Reporters of Local Papers may be
allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair
copy of the judgment ?

4 Whether this case involves a substantial
question of law as to the interpretation of
the constitution of India, 1950 or any order
made thereunder ?

5 Whether it is to be circulated to the civil
judge ?

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**SUNITABEN WD/O SURESHBHAI DESAI AND ANOTHER
Versus****INDUBEN SUMANBHAI DESAI AND OTHERS**

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Appearance :

MR JB PARDIWALA with MR DIVYESH JOSHI for the Petitioners

MR NILESH PANDYA for Respondent Nos.1 to 3

MR AJ DESAI, Assistant Government Pleader for Respondent
Nos.4 to 7

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CORAM : HONOURABLE MS.JUSTICE H.N.DEVANI**Date : 02/11/2007****ORAL JUDGMENT**

1. By this petition under Articles 226 and 227 of the Constitution of India, the petitioner challenges the order dated 16th November 1999 passed by the Special Secretary, Revenue Department (Appeals) in proceeding bearing No.SRD/HKP/VLS/ 74/93, order dated 9th November 1993 passed by the Collector, Valsad in RTS/Revision/Case/31/ 93, order dated 28th December 1992 passed by the Deputy Collector, Valsad in RTS Appeal No.67 of 1992 as well as the order dated 23rd March 1992 passed by the Mamlatdar, Valsad, whereby he has rejected the mutation entry No.168 of moje Bhagdakhud, Tal: Valsad.
2. The facts of the case stated briefly are that the petitioner had purchased the property in dispute in auction sale proceeding conducted by the Civil Judge (Senior Division), Navsari in connection with Special Execution Petition No.9 of 1964 in Special Civil Suit No.29 of 1954. The petitioner as the highest bidder, was declared the owner of the properties which were put to auction by the Civil Court. The auction proceedings were conducted on 24th September 1970 and the sale was declared to be final and conclusive on 31st August 1976. The Civil Court (Senior Division), Navsari issued a sale certificate on 16th

November 1976 in favour of the petitioner. It is the case of the petitioner that he was put in possession of the property bearing City Survey No.4812 and Survey No.318/1/2/3 on 28th December 1976. It appears that on 21st June 1977, the petitioner's name was entered in the revenue record by Entry No.80 but Survey No.318/2 and 318/3 were not included in the said entry. The said entry was certified on 6-10-1980. Thereafter, vide entry No.168, property bearing Survey Nos.318/2 and 318/3 was included in the revenue records, which was certified by the Mamlatdar on 1-5-1986.

3. The respondents i.e. the original judgment debtors preferred an appeal before the Deputy Collector against the order of the Mamlatdar certifying the aforesaid entry No.168. The Deputy Collector vide his order dated 19th March 1990, remanded the matter to the Mamlatdar to initiate fresh inquiry in the right direction.
4. Pursuant to the order of remand, the Mamlatdar, Valsad vide his order dated 23rd March 1992, held that the petitioner had not bid for revenue Survey Nos. 318/2 and 318/3 at the auction. He, accordingly, rejected the mutation entry No.168. The aforesaid order of the Mamlatdar was challenged by the petitioner before the Deputy Collector, Valsad, who by his order dated 28th December 1992, dismissed the appeal and upheld the order of the Mamlatdar. The petitioner carried the aforesaid order passed by the Deputy Collector before the Collector, Valsad by way of revision application. The Collector, Valsad by his order dated 9th November 1993,

rejected the revision application and confirmed the order passed by the Deputy Collector. Being aggrieved, the petitioner challenged the aforesaid order dated 9th November 1993 before the Additional Chief Secretary, Revenue Department (Appeals), who by his order dated 23rd August 1999, rejected the revision application and confirmed order passed by the Collector, Valsad, giving rise to the present petition.

5. Heard Mr. J.B. Pardiwala and Mr. Divyesh Joshi, learned advocates for the petitioners, Mr. N.A. Pandya, learned advocate for respondents No.1 to 3 and Mr. A.J. Desai, learned Assistant Government Pleader for the respondents No.4 to 7.
6. Mr. Pardiwala, learned advocate for the petitioners has submitted that all the authorities below have held that the petitioner had not bid for the subject lands at the relevant time, hence, the mutation entry for entering the name of the petitioner in respect of the land in question had been rejected. He has drawn the attention of the Court to the certificate of sale, annexed as Annexure A to the petition to point out that the said sale certificate itself shows that City Survey No.4812 consisted of Revenue Survey No.318/1/2/3. It is accordingly, submitted that the revenue authorities in proceedings under Rule 108 of the Gujarat Land Revenue Rules, 1972 could not have decided the issue as to whether the petitioner had purchased the lands at the public auction or not and could not have gone beyond the sale certificate issued by the Court of competent jurisdiction.

7. Mr. Pardiwala has also drawn the attention of the Court to the judgment and order dated 28th July 1993 passed by the Civil Judge (Senior Division), Valsad in Civil Miscellaneous Application No.7 of 1991 which had been filed by Induben Sumanbhai Desai, the wife of Sumanbhai Fakirbhai Desai, the original respondent. The said application had been filed alleging that the petitioners herein had not bid for Revenue Survey Nos.318/2, 318/3, 322/8, 509/1 + 327/2 and for City Survey Nos.4646, 4640, 4052 and 4631, however, due to clerical mistake, the said properties had been mentioned by the Court in the sale certificate. The applicant had accordingly filed the application under section 152 of the Code of Civil Procedure for correction of clerical mistake. The learned Civil Judge (Senior Division), Valsad by order dated 28th July 1993 has held that there is no clerical or arithmetical mistake in the sale certificate in respect of the Revenue Survey Nos.318/2, 318/3, 322/8, 509/1 + 327/2 and City Survey Nos.4646, 4640, 4052 and 4631. Mr. Pardiwala has also drawn the attention of the Court to the order dated 6th December 1994 passed in Civil Revision Application No.218 of 1994, whereby the application of the respondent challenging the aforesaid judgment and order has been rejected. It was submitted that accordingly, the aforesaid order dated 28th July 1993 holding that the petitioners had in fact purchased the subject lands has become final.
8. Mr. Pardiwala has further submitted that at the relevant time, in the proceedings before the State Government,

the applicant was not aware of the aforesaid order passed by the Civil Court and hence was not able to adduce the said evidence before the revenue authorities. It is further submitted that the aforesaid judgment and order is a very important document, as it clarifies the entire position and the finding of the Civil Court is very much binding to the revenue authorities, hence, the matter requires to be remanded to the revenue authorities for deciding the matter afresh in the light of the decision of the Civil Court.

9. Mr. N.A. Pandya, learned advocate for the respondent Nos.1 to 3 has submitted that he has no objection, if the matter is remanded to the revenue authorities for deciding the matter afresh after giving an opportunity of hearing to all the parties.

10. Having perused the record of the case and considering the submissions advanced by the learned advocates for the parties, it is apparent that by the impugned orders, the revenue authorities have held that the petitioners had not bid in respect of the subject lands at the public auction in respect of which sale certificate has been issued. However, the Civil Court on an application made by the respondent has decided the issue vide the aforesaid judgment and order dated 28th July 1993. Hence, in the interest of justice, it is necessary that the matter be remanded to the revenue authorities to decide the same afresh in the light of the judgment and order passed by the Civil Court.

11. In the above view of the matter the petition succeeds and is, accordingly allowed. The impugned orders dated 16th November 1999 passed by the Special Secretary, Revenue Department (Appeals) in proceeding bearing No.SRD/HKP/VLS/ 74/93; order dated 9th November 1993 passed by the Collector, Valsad in RTS/Revision/Case/31/ 93, order dated 28th December 1992 passed by the Deputy Collector, Valsad in RTS Appeal No.67 of 1992 as well as the order dated 23rd March 1992 passed by the Mamlatdar, Valsad are hereby quashed and set aside. The matter is now remanded to the respondent No.4, - Mamlatdar, Valsad to decide the proceedings in respect of mutation entry No.168 of moje Bhagdakhud, Tal: Valsad afresh after considering the aforesaid judgment and order passed by the learned Civil Judge (Senior Division), Valsad as well as after giving all the parties adequate opportunity of hearing. It will be open to the parties to adduce fresh evidence in support of their case before the Mamlatdar. The Mamlatdar, Valsad shall decide the matter as expeditiously as possible within a period of six months from the date of receipt of a copy of this judgment. Till the application is decided by the Mamlatdar, Valsad, parties shall maintain *status quo* in respect of land in question.

12. Rule is made absolute accordingly with no order as to costs.

ORDER IN CIVIL APPLICATION

In view of the order passed in the main petition, this

application does not survive and is accordingly disposed of.

(H.N.DEVANI, J.)

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